

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |   |                                 |
|--------------------|---|---------------------------------|
| TERRENCE DUNN,     | § |                                 |
|                    | § | No. 417, 2009                   |
| Defendant Below,   | § |                                 |
| Appellant,         | § | Court Below—Superior Court      |
|                    | § | of the State of Delaware in and |
| v.                 | § | for New Castle County           |
|                    | § |                                 |
| STATE OF DELAWARE, | § |                                 |
|                    | § | Cr. ID Nos. 0808031028          |
| Plaintiff Below,   | § | 0906011274                      |
| Appellee.          | § |                                 |

Submitted: November 10, 2009

Decided: February 3, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 3<sup>rd</sup> day of February 2010, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In December 2008, the appellant, Terrence Dunn, pled guilty to Possession of Heroin and Delivery of Heroin ("the 2008 case"). Dunn was sentenced to three years at Level V incarceration suspended for eighteen months of Level II probation.

(2) In May 2009, Dunn was adjudged guilty of violation of probation (VOP) in the 2008 case. Dunn was sentenced to three years at Level V incarceration suspended for twelve months at Level III probation.

(3) On June 13, 2009, Dunn was arrested on new drug charges (“the 2009 case”). As a result of his arrest, Dunn was charged, on June 18, 2009, with VOP in the 2008 case.

(4) On June 23, 2009 Dunn pled guilty to one count of Possession of Heroin within 1000 Feet of a School in the 2009 case. The Superior Court sentenced Dunn to five years at Level V incarceration suspended after ten days for Level IV work release, suspended after six months for one year of Level III probation.

(5) On July 15, 2009, the Superior Court adjudged Dunn guilty of VOP in the 2008 case and sentenced him to three years at Level V incarceration suspended after eighteen months for one year at Level III probation. This appeal followed.

(6) On appeal, Dunn’s defense counsel (“Counsel”) has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) (“Rule 26(c)”). The standard and scope of review of a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. First, the Court must be satisfied that Counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.<sup>1</sup> Second, the Court must conduct its own review of the record and determine whether the

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<sup>1</sup> *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>2</sup>

(7) Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. Counsel states that he provided Dunn with a copy of the motion to withdraw and the accompanying brief and appendix. Counsel also advised Dunn that he had a right to supplement Counsel's presentation. Dunn responded with written submissions that raise one claim of error for this Court's review. The State has responded to Dunn's submissions as well as the position taken by Counsel and has moved to affirm the Superior Court judgment.

(8) In his written submissions, Dunn contends that the June 18, 2009 charge of VOP in the 2008 case was dismissed as part of his June 23, 2009 plea agreement in the 2009 case. Dunn's contention is belied by the record, however, as neither the plea agreement nor the plea hearing transcript in the 2009 case makes any reference to the June 18, 2009 VOP charge in the 2008 case.

(9) The Court has reviewed the record carefully and has concluded that Dunn's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel made a conscientious

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<sup>2</sup> *Id.*

effort to examine the record and the law and properly determined that Dunn could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice